two only are required for that purpose, and that dollars were certainly intended. Our tax law *requires* the property to be valued in dollars and cents, the terms commonly used in referring to money in this state. If those figures do not mean value of the property, and in dollars likewise, what were they put there for? Our minds can conceive nothing else. We are, therefore, of the opinion that the description and valuation are sufficient, but some mark representing dollars ought to be used in immediate connection with the figures to prevent trouble in the future.

Judgment reversed.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME COURT OF MAINE.[3]
COURT OF ERRORS AND APPEALS OF MARYLAND
SUPREME COURT OF MICHIGAN.[5]
COURT OF CHANCERY OF NEW JERSEY.[6]

ACTION. See *Covenant.*

Decree in Equity for the Payment of Money.—In Maryland, an action at law will not lie to recover a sum of money decreed to be paid by a court of equity, within the same jurisdiction; the latter court has jurisdiction to enforce its own decree: *Boyle* v. *Schindle*, 52 Md.

ADMIRALTY.

Collision between Steamer and Sailing Vessel—Duty of Steamers—Appeal—Finding of Fact by the Court—Conclusiveness of.—A steamer approaching a sailing vessel must govern herself according to the course the sailing vessel actually pursues, and not to the course which it is assumed she will naturally pursue. And as the responsibility of avoiding collision is on the steamer, it is negligence for her to get so close that a slight change in the course of the sailing vessel, in a moment of seeming peril, will bring the vessels together: *Steamship Benefactor* v. *Mount*, S. C. U. S., Oct. Term 1880.

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1880. The cases will probably be reported in 12 or 13 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 97 Illinois Reports.

[3] From J. W. Spaulding, Esq., Reporter; to appear in 71 Maine Reports.

[4] From J. Shaaff Stockett, Esq., Reporter; to appear in 52 Maryland Reports.

[5] From Henry A. Chaney, Esq., Reporter; to appear in 42 Mich. Reports.

[6] From Hon. John H. Stewart, Reporter; to appear in 33 N. J. Eq. Reports.

The finding of facts by the court in an admiralty case will have, on appeal, all the effect of the verdict of a jury in actions at law, and will not be disturbed: *Id.*

AGENT.

Authority, to buy and sell does not include giving Notes—Borrowing Money—Retention by Principal of benefits of Agent's acts.—An agent, appointed by a company to have charge of a store, sell the goods, and from time to time make such purchases of goods as might be necessary in his judgment, subject to the general oversight of the directors, has no authority to give notes of the company, in order to procure loans of money; and when notes in suit were thus given, the plaintiff cannot recover: *Perkins* v. *Boothby*, 71 Me.

When an agent, without the authority or knowledge of his principal, borrows money and applies it to the payment and discharge of the legal liabilities of his principal, and the principal knowingly retains the benefit of such payment, the lender may recover therefor, in an action against the principal for money had and received: *Id.*

A principal cannot knowingly retain the benefit of money hired by his agent, in the name of the principal, and at the same time legally refuse to repay the loan upon the ground that the agent had no authority to borrow money: *Id.*

ARBITRATION AND AWARD.

Binding on Parties.—A parol submission of the state of accounts between parties, followed by a valid award, though not in writing, may be binding and conclusive upon the parties, if the arbitrators act fairly; but before a party is so bound, the agreement to arbitrate should be duly established: *Koon* v. *Hollingsworth*, 97 Ills.

ASSUMPSIT.

Loan—Action on the Case.—An action of assumpsit cannot be maintained to recover a sum of money promised to be loaned: *Conway* v. *Log Cabin Building Association*, 52 Md.

Whether an action on the case for breach of contract, in not loaning the money promised, can be maintained, *quære?*: *Id.*

BANKRUPTCY.

Writ of Error to Judgment against Bankrupt—When Bankrupt allowed to Prosecute—Right of Assignee to be heard on questions affecting Estate.—Where a judgment is rendered against a bankrupt after the adjudication in bankruptcy, he will be allowed to prosecute a writ of error in his own name. The appellate court will not decide on a motion to dismiss, whether his discharge releases him from all liability growing out of the judgment: *Hill* v. *Harding*, S. C. U. S., Oct. Term 1880.

In such case, if the assignee in bankruptcy is of opinion that any of the questions involved may affect the estate, he will be heard on such questions on the argument of the case: *Id.*

BILLS AND NOTES.

Indorsement guarantees prior Indorsements—Notice of Non-payment

—An indorser admits that previous indorsements were duly made and warrants the title and genuineness of the paper he transfers; and he is not released if it appears that a previous indorsement is invalid: *Fish* v. *First National Bank*, 42 Mich.

One who receives negotiable paper need not look beyond the signature of the last endorser if he is satisfied that it is genuine, and has no notice of facts that should put him on inquiry: *Id.*

Constitutional Law.

Extension of Term of Imprisonment for Violation of Prison Discipline.—Section 40 of chapter 140 of Revised Statutes, which provides that no convict shall be discharged from the state prison, until he has remained the full term for which he was sentenced, excluding the time he may have been in solitary confinement for any violation of the rules and regulations of the prison, is in derogation of the constitutional provision that a man shall not be deprived of his liberty, without due process of law, and is for that reason unconstitutional and void. [Three of the seven judges dissenting.]: *Gross* v. *Rice*, 71 Me.

In an action by a convict against the warden of the prison for such over-detention, actual (but not punitive) damages are recoverable, notwithstanding the statute has never before been judicially declared to be unconstitutional: *Id.*

Retrospective Curative Statutes.—If the defect in an act or proceeding consists in doing or omitting something which the legislature might have made immaterial by prior law, it may be made immaterial by subsequent law. Thus *e. g.*, if the legislature might have provided for township support of paupers, without submitting the question to a vote in the county, it may, by subsequent retrospective legislation, cure any defect of an illegal vote: *Town of Fox* v. *Town of Kendall*, 97 Ills.

Covenant

Limitation of Actions for Breach of Covenant—Covenant running with Land.—It seems that the right of action for breach of warranty accrues when substantial damage is suffered; and successive acts or occurrences causing damage amount to successive breaches: *Post* v. *Campau*, 42 Mich.

An incumbrance is anything which burdens a title; as a right of way; a right to take off timber; a right of dower; a condition that may work forfeiture, or any interest that diminishes the value of the land while it is consistent with the conveyance of the fee: *Id.*

The elements of a cause of action are, 1, a breach of duty to another, and 2, a damage to the latter resulting from it: *Id.*

A covenant runs with the land when its purpose is to give future protection to the title which the deed containing the covenant undertakes to convey, but not when it simply gives protection against something which immediately affects the title and causes present damage: *Id.*

Criminal Law.

Forgery—Separate Conviction on different Counts.—The forgery of a note with intent to defraud is a punishable felony, although the defendant may not be able to utter it, and the possession of a note knowing it to be forged, and passing it with intent to deceive and defraud, is

a separate and distinct felony, also punishable: *Parker* v. *The People*, 97 Ills.

While it is regular to join a count for forging, and a count for passing the same instrument, in the same indictment, it is not allowable to have a separate conviction and judgment under each count. There can be only one judgment where the one offence charged is introductory to and forms a part of the other: *Id.*

DAMAGES. See *Trespass.*

DEBTOR AND CREDITOR. See *Fraud; Husband and Wife.*

DEED.

Consideration—Parol Testimony—Estoppel.—In the absence of fraud, there being no ambiguity or uncertainty in the terms of the deed itself, verbal admissions of the defendant, like other parol testimony, are inadmissible to modify or vary its legal effect: *Morrill* v. *Robinson*, 71 Me.

The grantor and his representatives, in the absence of fraud, are estopped by the consideration clause in the deed from alleging that it was executed without consideration: *Id.*

DIVORCE.

Desertion.—If a husband drives his wife away, or treats her so brutally as to compel her to flee for safety, or is so cruel and malignant towards her as to show that he means to force her from his home, though she leaves the matrimonial habitation, he, in law, deserts her: *Skean* v. *Skean*, 33 N. J. Eq.

But a mere failure by a husband to furnish his wife with sufficient support is not a ground of divorce, nor will he be considered a deserter if she leaves him for that cause: *Id.*

So long as a husband shares with his wife whatever means of support he may have, the law makes it her duty to abide with him; and if she leaves him because he does not give her as much or as good as she desires, or as may be necessary, the law considers her a deserter: *Id.*

EQUITY. See *Action; Insurance.*

Attacking a Decree Collaterally.—A sale under a decree obtained in this court cannot be attacked collaterally, by setting up that the solicitor who acknowledged service of the *subpœna* on the party affected by it, in the suit in which the decree was made, had no authority to do so, nor that the ticket accompanying the *subpœna* did not apprise such party of the ground on which he was made defendant to the suit: *Dickinson* v. *City of Trenton*, 33 N. J. Eq.

ERRORS AND APPEALS. See *Admiralty; Bankruptcy; United States Courts.*

Insufficient Bond—Appeal not avoided—Power of Court to impose Terms.—The fact that the bond is insufficient, because it contains no security for costs, does not necessarily avoid the appeal, but the appellate court may impose such terms on the appellants for the omission, as under the circumstances, shall seem proper. In this case the court

ordered that the appeal be dismissed, unless within a certain time the appellants should give bond with sufficient security: *Seward* v. *Comeau*, S. C. U. S., Oct. Term 1880.

EVIDENCE. See *Deed.*

Federal Courts—Competency of Witnesses—Actions against Executors—What Interest disqualifies—Rev. Stat., sect. 858—*Rules of Evidence of State Courts—When not followed*—The proviso to sect. 858, Rev. Stat., that in actions by or against executors, administrators or guardians, neither party shall be allowed to testify, excludes only those who are technically parties to the issue and not those, who, not being parties, have an interest in the result of that issue: *Potter* v. *Third Nat. Bank of Chicago*, S. C. U. S., Oct. Term 1880.

It is not the duty of the federal courts to follow the rules of evidence prescribed by a state, where such rules conflict with the provisions of the Rev. Stat. (sect. 858), forbidding the exclusion of witnesses on the ground of interest: *Id.*

FIXTURE.

Machinery.—Machinery specially adapted for use in connection with the realty, and put up for use and actually used on it and owned in common with the realty, is a fixture, however the parties may regard it. So *held* where the machinery of a woollen factory, propelled by a water-wheel with shaft and belting, had been included as personal property in a mortgage of the land on which it was placed: *Lyle* v. *Palmer*, 42 Mich.

Water-wheel—Realty.—The water-wheel and gearing, put into a mill to be used permanently for operating said mill, become fixtures and pass with the mill: *Lapham* v. *Norton*, 71 Me.

A mill, built upon land in possession of the builder, under a verbal contract for its purchase, becomes a part of the realty, and the same result follows, though built for a third person with the understanding that such third person will take the premises upon certain conditions: *Id.*

Though a person in possession under a verbal contract of purchase is a tenant at will, he is not liable for rent so long as he performs the terms of his contract, or they are waived by the vendor. And all improvements made while such contract is in force are made under the agreement of purchase and not as tenant. In such case the principles of law applicable to landlord and tenant, in relation to improvements made, do not apply; but in the absence of any other agreement, they become a part of the freehold, as in the case of mortgagor and mortgagee: *Id.*

FRAUD. See *Husband and Wife.*

Voluntary Conveyance to hinder Creditors—Equity Practice.—Mortgaged premises were sold, and a decree for deficiency taken against the mortgagor. Thirteen days before such sale, the mortgagor conveyed all his lands, valued at $50,000, to his two sons, one of them a minor, in satisfaction of an alleged indebtedness of $8000 to them, no other debts being shown. *Held*, fraudulent as against the mortgagee *Hoboken Bank* v. *Beckman*, 33 N. J. Eq.

Although an answer, under oath, denying fraud, be not overcome by the testimony of two witnesses, or what is equivalent thereto, yet such answer, if it contain admissions of facts from which fraud follows as a natural and legal if not a necessary and unavoidable conclusion, does not disprove such fraud: *Id.*

Debtor and Creditor—Where Equity will aid Creditor—Participation of Mortgagee in Fraudulent Intent of Mortgagor.—Any one liable on a contract, express or implied, though only contingently liable, is a debtor, within the meaning of the Statute of Frauds, from the date of his contract: *Schmidt* v. *Opie*, 33 N. J. Eq.

All that a judgment-creditor need do, who seeks the aid of a court of equity against his debtor's land, is to show a judgment at law creating a lien thereon; but if he seeks aid in respect to his debtor's personal estate, he must show not only a judgment, but that an execution has been issued: *Id.*

On an agreement for the sale of land being made, the purchaser becomes, in equity, the owner of the land, and the vendor becomes the owner of the purchase-money: *Id.*

If a mortgagor executes a mortgage for a fraudulent purpose, and the mortgagee accepts it, with knowledge of the mortgagor's purpose, intending to aid him in such purpose, the mortgage will be held void as to those who are defrauded by it, even if it is founded on a perfect consideration: *Id.*

Husband and Wife.

Fraudulent Conveyance—Voluntary Settlement.—A voluntary conveyance to a wife or child when the donor is in embarrassed financial circumstances, is fraudulent as to pre-existing creditors, even though the party retains estate nominally in value equal or more than equal to all his indebtedness, when the event shows that the property retained is in fact not sufficient to discharge all his liabilities. In the case of a child, the conveyance or settlement must be a reasonable one, depending on the ability of the debtor at the time to withdraw the amount of the donation from his estate without the least hazard to his creditors, or in any material degree lessening their prospect of payment: *Patterson* v. *McKinney*, 97 Ills.

Right of Husband to Money received from the Sale of his Wife's Real Estate—Debt due by Husband to Wife—Statute of Limitations.—Money received by a husband from the sale of his wife's real estate, made before the adoption of the Code, belongs to the husband absolutely, unless *at the time he received it* he promised the wife to repay it, and obtained possession of it upon the faith of such promise: *Sabel* v. *Slingluff*, 52 Md.

The receipt of money under such circumstances as would make the husband liable therefor, merely creates a *debt* due by him to his wife, and against such a debt the Statute of Limitations runs, and it will be barred unless sued for or claimed in due time after disability of coverture removed: *Id.*

A bill to carry out the directions of a will for the sale of real estate, with prayer for general relief, is not a creditors' bill, and the filing of such a bill does not prevent the running of the Statute of Limitations

as against a debt due to the complainant and recoverable under a creditors' bill: *Id.*

INCUMBRANCE. See *Covenant.*

INJUNCTION.

Action sought to be enjoined completed before Relief asked.—A foreign corporation, without any authority whatever, laid a pipe for transporting oil on the bottom of a navigable river, on lands belonging to the state, and underneath a drawbridge of complainant. At that point, the channel was so deep and wide as that the laying of the pipe there would not interfere with the bridge. A preliminary injunction to prevent such pipe-laying was denied, because: 1. The pipe had been laid before the application for the injunction was made. 2. The lands where the pipe crosses the bridge belong to the state, and the complainants have no legislative authority to reclaim them. 3. The pipe, as laid, does not interfere with or obstruct the maintenance and operation of the drawbridge nor any lawful filling. 4. The complainant's franchise of carrying oil is not exclusive, and therefore does not prevent any other company from doing so, if not in contravention of the company's franchise, much less so when it appears the defendants intend to transport only their own oil: *United New Jersey Railroad & Canal Co.* v. *Standard Oil Co.*, 33 N. J. Eq.

INNKEEPER.

Extent of Liability—Cattle.—An innholder's liability is not confined to goods pertaining to his guests as travellers merely. If he receives cattle, driven on the road, to keep over night, he is responsible for the safety of the place provided for them: *Hilton* v. *Adams*, 71 Me.

In the absence of any notice to the contrary from an innkeeper, at the time of receiving cattle to keep over night, the jury were warranted in finding, that it was to him as such innkeeper, that the property was delivered: *Id.*

INSURANCE.

Life Insurance—Failure to pay Interest on Premium Notes—Forfeiture.—In contracts of life insurance, the time for the payment of interest on the premium notes, is of the very essence of the contract, and must be strictly complied with; and if by the terms of the policy, it is to become void upon a failure to pay such interest at the time specified, equity will not relieve against the forfeiture: *Knickerbocker Life Ins. Co.* v. *Dietz*, 52 Md.

JUDGMENT. See *Equity.*

LACHES. See *Mortgage.*

LIMITATIONS, STATUTE OF. See *Husband and Wife.*

MORTGAGE.

Deed absolute in Form—Proof must be Clear—Laches.—On bill to have a deed, absolute on its face, declared a mortgage, and for leave to redeem, filed thirteen years after the transaction, and seven years after a refusal to accept the amount offered as the sum due, it is incumbent

on the complainant to establish, by clear and satisfactory testimony, beyond all cavil, the material allegations on which he bases his right to relief: *Maher* v. *Farwell*, 97 Ills.

When a bill to redeem from an absolute deed, on the ground it was given as a security for money, is not filed until thirteen years after the date of the alleged transaction, and more than seven years after the grantee distinctly refused to recognise complainant's rights, which appears in the bill, and there is no sufficient excuse for the delay, the laches is such as to bar his right to relief: *Id.*

Municipal Corporation.

Liability of Property for Debts—Property held for Public use—Private Property of Individuals—Repeal of Charter—Appointment of Receiver at Suit of Creditor—Taxes not collected except by Legislative Authority.—Property held by a city for public uses, such as public buildings, streets, parks, wharves, fire-engines and generally everything held for governmental purposes, cannot be subjected to the payment of the debts of the city. Its public character forbids such an appropriation. Upon the repeal of the charter of the city, such property passes under the immediate control of the state, the power once delegated to the city having been withdrawn: *Meriwether* v. *Garrett*, S. C. U. S., Oct. Term 1880.

The private property of individuals within the city limits cannot be subjected to the payment of the debts of the city, except through taxation. The doctrine of some of the states that such property can be reached directly on execution against the municipality has not been generally accepted: *Id.*

The power of taxation is legislative and cannot be exercised otherwise than under the authority of the legislature: *Id.*

Taxes levied before the repeal of a city's charter, other than such as were levied in obedience to the special requirements of contracts entered into under the authority of law, and such as were levied under judicial direction for the payment of judgments, cannot be collected by a receiver appointed by a court of chancery at the instance of creditors. Such taxes can only be collected under authority from the legislature. If no such authority exists the remedy is by appeal to the legislature: *Id.*

Whether taxes levied in obedience to contract obligations or under judicial direction can be collected by a receiver appointed by a court, if there be no public officer charged with legislative authority to perform that duty, *quære*: *Id.*

National Bank.

Usury—Does not avoid Guaranty by Third Party.—The demand and receipt by a national bank of usurious interest from endorsers upon notes discounted by it, the payment of which notes was guaranteed to the bank by L., in a written guaranty, does not avoid the contract of guaranty between L. and the bank: *Lazear* v. *Nat. Union Bank of Maryland*, 52 Md.

A national bank has no authority, under the Banking Act, to use its funds in purchasing notes, and can acquire no title thereto by the purchase: *Id.*

Where a guaranty is given to a national bank for all liabilities to said bank of certain parties, then existing or which might thereafter arise, to the extent of an amount specified, the guarantor holding himself liable to that extent for all paper that might be held by the bank of said parties, either as drawers or endorsers, and the bank subsequently discounts paper, of which said parties were drawers or endorsers, it is exclusively within the province of the jury in an action by the bank against the guarantor, to determine whether the money was parted with by the bank on the faith of the guaranty or otherwise: *Id.*

Partnership.

Marshalling of Assets between Firm and Individual Creditors.—On marshalling the assets of both partnership and individual estates, under separate assignments for the benefit of creditors, the partnership creditors are not entitled, after exhausting the partnership assets, to resort to the individual assets until after the individual creditors' claims have been satisfied: *Davis* v. *Howell*, 33 N. J. Eq.

Patent.

Re-issue—Extent of Claims—Construction of with reference to Original Patent.—The court will construe the claims of a re-issued patent with reference to the state of the art at the date of the original invention, and the limitation of that invention, in the original patent, to a machine of specific construction and form; *Swain Turbine & Manuf. Co.* v. *Ladd*, S. C. U. S., Oct. Term 1880.

There is no safe or just rule but that which confines a re-issued patent to the same invention which was described or indicated in the original. In a clear case of mistake—not error in judgment—the patent may, undoubtedly, be enlarged, but that should be the exception, not the rule: *Id.*

Presumption.

Of Death from Absence.—If a person leaves his usual home and usual place of residence for temporary purposes, and is not heard of or known to be living for the term of seven years, by those persons who would naturally have heard from him during the time had he been alive, the presumption is that he is dead. The rule does not confine the intelligence to any particular class of persons; it may be persons in or out of the family: *Wentworth* v. *Wentworth*, 71 Me.

A failure to hear from an absent person for seven years, who was known to have had a fixed place of residence abroad, would not be sufficient to raise a presumption of his death, unless due inquiry had been made at such place without getting tidings of him: *Id.*

Receiver. See *Municipal Corporation.*

Removal of Causes.

Removal by consent—When allowable—Possession by Federal Court of Subject-matter of Controversy.—While consent cannot give jurisdiction to the Federal courts, yet if such jurisdiction depends not upon the citizenship of the parties, but upon the property which is the subject-matter of controversy, and this is already in the possession of

the Federal court before the commencement of the suit sought to be removed, there is no error in such court entertaining jurisdiction upon a transfer by agreement: *Peoples' Bank of Belleville* v. *Winslow*, S. C. U. S., Oct. Term 1880.

Final Hearing—Decision by Appellate Court on the merits—Sending Case back to have Account stated by a Master—Subsequent Petition for Removal—Acts of 1866, 1867.—Where the Supreme Court of a state, in reversing the decree of a lower court, decides the point at issue between the parties, and remands the cause, not for a rehearing on the merits, but merely for reference to a master to state an account on which a final decree can be entered, there has been a final hearing within the meaning of the Acts of 1866 and 1867, and a subsequent petition for removal to the Federal courts comes too late: *Jifkins* v. *Sweetzer*, S. C. U. S., Oct. Term 1880.

Vannever v. *Bryant*, 21 Wall. 43, distinguished: *Id.*

Sale.

Personal Property—Delivery—When not required.—Where the acceptance, by the vendor of an offer for a lot of hay, is absolute and unqualified, the expression of a hope by him, that the vendee will pay a greater sum for it when hauled, does not vary the contract; *Phillips* v. *Moor*, 71 Me.

If a purchaser would retract an offer made by him for hay, on the ground that his offer was not seasonably accepted, he should notify the seller promptly of his intention so to do: otherwise he must be regarded as having waived all objection to the acceptance on that ground: *Id.*

Where the terms of sale of any specific piece of personal property are agreed on and the bargain is struck, and everything the seller has to do about it is complete, and he has authorized the buyer to take it, the contract of sale becomes absolute without actual payment or delivery, and the property is in the vendee, and the risk of loss by accident devolves upon him: *Id.*

A Condition to a Sale of Goods to a Retail Dealer is binding upon him and his Assignees, but not upon his Vendees in the regular course of Business.—Goods bought by a retail trader upon a condition that the property shall not vest in him until they are paid for, but with an understanding between him and his vendor that they are to go into his store and be sold by him in the regular course of trade, will not pass to his assignee in insolvency, or for the benefit of creditors, although the original vendor would be estopped to deny the title of those who might purchase portions of them of the retailer in the regular course of his business: *Rogers* v. *Whitehouse*, 71 Me.

It is not essential to the existence and validity of such a condition that the conditional vendor should have no right to sell to others. His assignee takes only such right as he himself could assert in the goods against his vendor, and if he has agreed that the property in the goods shall remain in the vendor until they are paid for, the vendor may replevy them from his assignee although such vendor could no tdispute the title of those who had purchased portions of them in good faith and in the regular course of trade from his vendee: *Id.*

Seller's talk—Warranty.—The representation by the vendor of a

threshing machine that it is a very good machine and will do nice work, is not a warranty: *Worth* v. *McConnell*, 42 Mich.

SURETY.

Guardian's Bond—Signing on Condition not apparent on the Bond.—A surety cannot escape liability on a guardian's bond as having signed only on condition that a specified co-surety should be procured before it was used, if he had delivered it to the principal to be completed with nothing on its face to suggest to the approving officer that such a condition was imposed. The fact that the obligation clause in a printed form was so filled out as to read "sureties" is not enough. The name of the person designated for co-surety should be inserted in the bond: *Brown and Douglass* v. *Judge of Probate*, 42 Mich.

TAXATION. See *Municipal Corporation*

TRESPASS.

Assault and Battery—Measure of Damages.—It is the abuse of some special and particular authority given by law, and not of a legal right which is common to all, which will make a man a trespasser *ab initio* and so responsible for all his acts in the transaction, and liable to make compensation to the injured party for all the damage he has suffered, whether it arose from acts which would have been justifiable if the legal right had not been exceeded, or otherwise: *Turner* v. *Footman*, 71 Me.

Where the legal right of self defence has been exceeded, the party so offending is liable only for the excess of force, and not for any damage which his opponent may have suffered from acts that were within the proper line of self defence: *Id.*

It is erroneous in an action for assault and battery, where the defendant not only pleads the general issue, but further by way of brief statement that he "was unlawfully imprisoned by the plaintiff in her shop and used no more force than was necessary to liberate himself from such unlawful imprisonment," and offers evidence in support of the last plea, to instruct the jury that if their verdict is for the plaintiff, it should be for such sum as would make her pecuniarily whole, and as would fairly and justly compensate her for the injury received. Such instruction is appropriate only in case the jury should find that the attempted imprisonment was not unlawful. Upon such pleadings, with evidence in support of them, the jury should also be instructed as to the proper measure of damages in case they should find that the attempted imprisonment was unlawful, but that defendant used excessive or improper force to relieve himself from it. Nor does the defendant waive his right to have such instructions by omitting to make a special request for them, when the only rule for the measure of damages given to the jury is full compensation: *Id.*

TRUST.

Of Personalty, may be created by Parol.—A valid trust of personal property may be created by mere spoken words, and proved by parol evidence: *Danser* v. *Warwick*, 33 N. J. Eq.